

Mr. Audie Huber, Confederated Tribes of the Umatilla Indian Reservation, Pendleton, OR
Ms. Susan Irwin-Savage, University of Denver, Museum of Anthropology, Denver, CO
Mr. Greg Johnson, University of Colorado, Boulder, CO
Ms. Natalie Landreth, Native American Rights Fund, Anchorage, AK
Ms. Diana LaSarge, Confederated Tribes of the Umatilla Indian Reservation, Pendleton, OR
Ms. Dorothy Lippert, Smithsonian Institution, National Museum of Natural History, Washington, DC
Ms. Kathryn Marr, Colorado Historical Society, Denver, CO
Mr. Bradley Marshall, Phoebe A. Hearst Museum of Anthropology, Berkeley, CA
Ms. Nell Murphy, American Museum of Natural History, New York, NY
Mr. Angela Neller, Wanapum Heritage Center, Ellensburg, WA
Mr. Paolo Pellegatte, Phoebe A. Hearst Museum of Anthropology, Berkeley, CA
Mr. Seth Pilsik, San Carlos Apache Tribe of the San Carlos Reservation, San Carlos, AZ
Ms. Jami Powell, Denver Museum of Nature and Science, Denver, CO
Ms. Judith Ramos, Yakutat Tlingit Tribe, Yakutat, AK
Mr. Vincent E. Randall, Yavapai-Apache Nation of the Camp Verde Indian Reservation, Camp Verde, AZ
Ms. Helen Robbins, Field Museum, Chicago, IL
Ms. Alyce Sadongei, Arizona State Museum, Tucson, AZ
Ms. Mari Lyn Salvador, Phoebe A. Hearst Museum of Anthropology, Berkeley, CA
Ms. Lauren Sieg, Springfield, VA
Ms. Hilary Soderland, Phoebe A. Hearst Museum of Anthropology, Berkeley, CA
Ms. Wendy Giddens Teeter, Fowler Museum of UCLA, Los Angeles, CA
Ms. Brenda Todd, National Park Service, Denver, CO
Mr. Chris Wolff, Smithsonian Institution, National Museum of Natural History, Washington, DC
Mr. Frank Wozniak, USDA Forest Service, Southwestern Region, Albuquerque, NM
Ms. Karen Wurzbarger, National Park Service, Denver, CO

Review Committee's Report to Congress for 2009

Mr. Hemenway summarized the draft report to Congress for 2009. The Review Committee members made minor edits to the report, as well as more substantive recommendations. Mr. Hemenway will incorporate those edits and recommendations in a second draft of the report to be presented for approval by the Review Committee at its June 11 meeting. The substantive recommendations were as follows:

Summary of Meetings and Activities: Mr. Wright, Jr., recommended that the Review Committee reaffirm its support for amending the definition of "Native American" (25 U.S.C. 3001 (9)) to mean "of, or relating to, a tribe, people, or culture that is *or was* indigenous to the United States," which met with full committee support.

Progress Made and Barriers Encountered: Mr. Wright, Jr., stated that the Barriers Encountered section clearly outlined the frustrations that exist with NAGPRA implementation, and he cautioned against giving a false impression of success in the Progress Made section given the large number of items that still remain listed on the CUI database and in collections. Mr. Monroe referenced the statement "Consultation is one of the critical steps in progress being made under NAGPRA. Many tribes feel frustrated when requests for consultation are not taken seriously by museums or Federal agencies." Mr. Monroe said that the statement implies that such frustration applies to all museums and Federal agencies, even those responding in a timely manner and consulting in good faith. Ms. Worl recommended that reference to prior testimony heard by the Review Committee on this issue be inserted in the report. Mr. Hemenway stated he did not intend to give the impression of across-the-board frustration, and he would incorporate Ms. Worl's recommendation. The Review Committee agreed with the proposed change.

Mr. Monroe referenced the statement "Many tribes feel that the mechanism that is assigned to handle non-compliant civil penalties does not work due to lack of manpower and the complexity of the civil penalty procedure." Mr. Monroe said that referencing the current statistics and factual data would make the statement stronger. Mr. Hemenway and Ms. Augustine stressed the importance of effective enforcement of the regulations. When asked for a summary of civil penalties both resolved and in process, Mr. Tarler stated that historically less than 25 percent of allegations were found to be substantiated, while 64 percent of museums facing allegations were found to have

failed to comply with the requirements of NAGPRA. Mr. Tarler stated that the number of allegations received has been roughly equal to those resolved, and as of the meeting date a total of 20-some museums, representing 110 to 115 counts of failure to comply, still required an investigation with respect to written allegations of failure to comply. Mr. Goodman agreed with Mr. Monroe's recommendation, and he also recommended the addition of a subjective description of the effect on parties to repatriation. Ms. Hutt stated that the civil penalty investigator's time was increased from 10 percent in the years up through FY09 to 50 percent for FY10. The Review Committee members agreed to incorporate a combination of statistics, a subjective statement of the effect on parties to repatriation, and recognition of the increased resources for the investigator along with the need for increased resources to address this very real concern. The Review Committee agreed with the proposed change.

Mr. Monroe asked for a description of the process for making allegations of failure to comply, and he specifically asked whether the Department can initiate an investigation. Mr. Tarler stated that any person may bring an allegation of failure to comply, which must be submitted in writing and must include documentation identifying the provision of the Act with which there has been a failure to comply. Ms. Worl stated that she has raised this issue in the past; the process warrants discussion and further review by the committee. Mr. Monroe agreed with Ms. Worl and stated that it would be beneficial for the National NAGPRA Program to clarify the existing procedure. Ms. Hutt stated that the National NAGPRA Program strives to provide educational support to help bring institutions into compliance. Ms. Mattix stated that under Secretarial Order, the Assistant Secretary for Fish, Wildlife and Parks had the ultimate responsibility for policy direction and ultimate enforcement of civil penalties. Mr. Monroe stated he supports the relationship between education and enforcement, but he would ask that a special effort be made to clarify precisely how the system works.

Mr. Monroe referenced the statement "Museum compliance goes beyond consultation and other barriers that are encountered by tribal communities requesting inventories or summaries and not receiving them in a timely manner is a huge problem." Mr. Monroe asked Mr. Hemenway for clarification of the statement. Mr. Hemenway stated it was based on his personal experience that sometimes a request for an inventory or summary is not honored for a year or more. During discussion, the Review Committee members could not immediately recall other testimony to that effect, and Mr. Monroe recommended that the wording be changed to underscore the criticality of timely responses to the consultation process and the timely provision of inventories and summaries when requested. The Review Committee agreed with the proposed change.

Mr. Monroe referenced the statement "Interpretation of NAGPRA itself can be a very problematic situation." Mr. Monroe asked Mr. Hemenway for clarification of the statement. Mr. Hemenway stated the purpose of this statement was to highlight the 90-day rule and the various interpretations among the museum, Federal agency, and tribal communities. Mr. Monroe agreed and asked for comment by the National NAGPRA Program. Ms. Mattix stated that the 90-day rule was basically a provision, with respect to human remains, associated funerary items and summary items, that says repatriation must take place within 90 days of receipt of a written request for repatriation that satisfies the requirements of 43 CFR 10.10 but no less than 30 days subsequent to publication of a notice in the Federal Register. Ms. Mattix stated that there had been confusion about the rule, and the amendment of the rule would be one of the items to be considered during a planned comprehensive review of the regulations at 43 CFR Part 10. Mr. Monroe suggested that interpretation of this rule be placed on the agenda for the November meeting and that the Review Committee state in the report to Congress that the 90-day rule needs clarification.

Recommendations: Mr. Hemenway predicted that, with the passage of the final regulations for 43 CFR 10.11, there would be an increase in draft Notices of Inventory Completion coming to the National NAGPRA Program for publication. Consequently, he included a recommendation in the draft report to Congress for additional funding to staff three positions, two positions to address the additional workload of notices, as well as one position to address civil penalties. Other recommendations for the report to Congress suggested during the meeting included addressing a need to clarify the 90-day rule, the civil penalty process, additional funding for the grants program, and reaffirmation of support of the "or was" amendment to the definition of "Native American." Mr. Monroe stated it was very difficult for the Review Committee to advise the Secretary and carry out its responsibilities without knowledge of the results of past activities of the committee. Mr. Monroe recommended that the Review Committee underscore the need for ongoing follow-up and a summary of decisions and recommendations. The Review Committee agreed with the proposed recommendations.

Presentations on the Progress Made, and any Barriers Encountered, in implementing Section 5, 6, and 7 of NAGPRA: Ms. Worl recommended that the presentations made before the Review Committee be considered and included in the report to Congress. The Review Committee agreed with the recommendation.

Presentations on the Progress Made, and any Barriers Encountered, in Implementing Section 5, 6 and 7 of NAGPRA for Review Committee Consideration for the Report to Congress

Colorado Historical Society

Ms. Sheila Goff, NAGPRA liaison, and Ms. Bridget Ambler, Curator of Material Culture, spoke on behalf of the Colorado Historical Society, which was currently in the process of a name change to History Colorado. Ms. Goff stated that the Colorado Historical Society was established 130 years ago and collection practices have changed over the years. Although no longer actively collecting human remains, the Colorado Historical Society does receive human remains from the state's Office of Archaeology and Historic Preservation, following inadvertent discoveries on Colorado state and private land. Since 2008, the Colorado Historical Society has completed disposition of culturally unidentifiable Native American human remains under a state process entitled "The Process for Consultation, Transfer and Reburial of Culturally Unidentifiable Native American Human Remains and Associated Funerary Objects Originating from Inadvertent Discoveries on Colorado State and Private Lands." The process was presented to the Review Committee in 2006 and 2008, and its implementation was recommended by the Secretary of the Interior in 2008. Ms. Goff stated the Colorado Historical Society has worked hard to build trust with tribes through consultation meetings. The Colorado Historical Society met the required deadlines for completing their summaries (in 1993) and inventories (in 1995), and sending them to potentially affiliated tribes. Since the establishment of its NAGPRA program, the Colorado Historical Society has conducted over 200 tribal consultation meetings with 59 tribes. Consultations have resulted in cultural affiliation determinations, the identification of sacred and ceremonial objects and objects of cultural patrimony, and have informed policies on caring for objects in collections. The Colorado Historical Society has repatriated 664 Native American human remains and close to 2,000 associated funerary objects, all of which were listed in 11 Notices of Inventory Completion and 1 Notice of Inventory Completion Correction. The Colorado Historical Society established a partnership with the Colorado Commission of Indian Affairs and created a state-funded NAGPRA liaison position, currently held by Ms. Goff.

Ms. Ambler stated that the success of the Colorado Historical Society in NAGPRA implementation was directly attributable to the NAGPRA grant funds and the guidance and assistance provided by the National NAGPRA Program. Ms. Ambler described several successful projects:

- A partnership with the Denver Art Museum in 1997, to host a grant-funded symposium exploring the applicability of NAGPRA to Plains pictorial art;
- The development of policies and procedures for consultation and repatriation, which include a 30-day response time to tribal requests for information and claims;
- A 2001 symposium of tribal and academic experts to identify evidence that could yield cultural affiliation for human remains and associated funerary objects from Eastern Colorado, which resulted in a tribal caucus to file a joint claim based on cultural affiliation and the ultimate repatriation of 260 Native American individuals and 548 associated funerary objects;
- Development of the "Colorado Historical Society Manual for the Care and Treatment of Native American Material Culture Collections";
- A rehousing of the entire assemblage of human remains and associated funerary objects in an environment that is archivally stable and sensitive to tribal concerns;
- Development and distribution of collection information by CD-ROM to more effectively share information with tribal members; and
- The development of "The Process for Consultation" described by Ms. Goff, through a series of facilitated consultation meetings, which has resulted in the disposition of 68 individuals and 62 associated funerary objects.

Ms. Ambler stated that one of the barriers encountered by the Colorado Historical Society was the complex interaction of Colorado state burial law and NAGPRA. The Colorado Historical Society recommended that the National NAGPRA Program provide assistance to states facing the same challenge to develop procedures on a state-

1 issue, grants, and added staff support
2 recommendations. Are there any other
3 recommendations that we need to consider?

4 If not, then let's move, David, to the
5 presentations.

6 DAVID TARLER: Mr. Chair?

7 DAN MONROE: Yes.

8 DAVID TARLER: I believe that there was the
9 recommendation, and I don't - I did not receive the
10 report that you have, that the Review Committee was
11 asking the Congress to revisit the amendment that
12 had been introduced earlier with respect to the
13 definition of Native American. Does that already
14 exist in the draft?

15 DAN MONROE: No, I don't - thank you, David.
16 I'm not sure that it does, and it's our intent that
17 it be included. The "was and is" phrase, right?

18 DAVID TARLER: That's correct.

19 DAN MONROE: So we have one, two, three, four,
20 five recommendations by my count. Again,
21 compliance, 90-day rule, grants, additional staff,
22 and the was-is provision.

23 Is everyone in concurrence that that is -
24 those are the list of recommendations we wish to
25 make?

1 SONYA ATALAY: Yes.

2 ROSITA WORL: Yes, Mr. Chair.

3 ALAN GOODMAN: Yes.

4 MERVIN WRIGHT, JR.: Yes.

5 DONNA AUGUSTINE: Yes.

6 ERIC HEMENWAY: Yes.

7 DAN MONROE: Very good. Thank you all very
8 much.

9 David, I'm not entirely clear. Can you
10 clarify for me, do we have folks that wish to
11 testify or make comments on the Review Committee's
12 report to Congress?

13 DAVID TARLER: Yes, Mr. Chair. At the last
14 Review Committee meeting there was a specific
15 request by the Review Committee that at this next
16 meeting the Review Committee hear presentations on
17 progress made and any barriers encountered in
18 implementing NAGPRA. And that request was
19 contained in the Federal Register notice announcing
20 the meeting of the Review Committee today, and the
21 deadline for submitting presentations was actually
22 extended. And there are four presenters on the
23 agenda, and they are the Colorado Historical
24 Society, Bernstein and Associates, the Western
25 Apache NAGPRA Working Group, and the Columbia